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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/887,978 | 06/22/2001 | William Gray | 1780/1D144-US2 | 9044 |

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EXAMINER

THALER, MICHAEL H

ART UNIT PAPER NUMBER

3731

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Newly submitted claims 22 and 23 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 22 and 23, as originally presented, were limited to the species of figures 1-7. Newly submitted claims 22 and 23 (as currently amended), as best understood, are limited to the species of figures 12-14. Claim 22 includes the deployment mechanism shown in figure 12. The actuating mechanism for the species of figures 1-7 is not shown (as indicated on page 10, lines 15-17) and there is no indication in the original disclosure that the deployment mechanism shown in figure 12 can be the actuating mechanism for the embodiment of figures 1-7. Claim 23, as best understood, includes a support cage with a flared proximal end which appears to be shown in figure 13. The claimed flared proximal end cannot be flared proximal end 95 shown in figure 7 since the flared proximal end 95 shown in figure 7 is mounted (at its left edge) to a conical section (near the arrow for reference numeral 90) rather than the shaft as claimed. The species of figures 1-7 is patentably distinct from the species of figures 12-14.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22 and 23 withdrawn from

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consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on Dec. 9, 2004 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention for the reasons set forth above.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

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MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731